IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 14426 of 2004

Between:

M/s Pantex Geebee Fluid Power Ltd. Plot No.57, Phase-IV, IDA, Patancheru – 502319, rep.by its Managing Director, Dr.B.Y.Murthy, S/o B.T.K.Murthy, aged about 59 years R/o R.C.Puram, BHEL, Hyderabad .

..... PETITIONER

AND

1 Employees Provident Funds Appellate Tribunal, rep.by its Chairman, New Delhi.
2 Assistant Provident Fund Commissioner, Sushiram Complex, Patancheru, Medak District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus, or any other appropriate Writ, order or direction, declaring the action of the 2nd respondent in issuing the impugned notice dated 20-7-2004 and subsequent order dated 30-7-2004 directing the petitioner to pay the alleged dues when appeal is pending in appeal No.385(1)/2002 before the 1st respondent as illegal, arbitrary and violative of principles of natural justice and for a consequential order further directing the respondents to drop all further proceedings including recovery of the amounts as stated in the impugned notice dated 20-7-2004 from the petitioner.

Counsel for the Petitioner:MR.CHALLA DHANAMJAYA

Counsel for the Respondents : MR.R.N.REDDY

The Court made the following :

ORDER:

The petitioner is an establishment covered by the Provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity "the Act"). As there were certain provident fund arrears, after following due process of law, the Assistant Provident Fund Commissioner determined the amount under Section 7A of the Act by passing an order dated 28.12.2001. Aggrieved by the same, the petitioner sought a review of the order under Section 7B of the Act. By an order dated 15.02.2002, the competent authority reduced the provident fund arrears and initiated action for recovering the amount. The petitioner filed an appeal under Section 7I of the Act, dated 12.08.2002, along with the stay application, but, no stay orders are passed. Therefore, action was initiated under Section 8B of the Act and on 20.07.2004, the second respondent who issued recovery certificate dated 20.07.2004 required the petitioner to appear before him and show cause as to why, he should not be committed to civil prison in execution of the certificate of recovery. The Managing Director of the petitioner-company appeared before the second respondent and while expressing financial difficulties, gave an undertaking to remit the **entire outstanding dues** under protest by 20.08.2004 and requested time till then. The second respondent considered the request and granted time till 20.08.2004.

In this writ petition, however, the petitioner-company impugns the show cause dated 20.07.2004 issued under Section 8B of the Act, as well as the proceedings dated 30.07.2004 of the second respondent granting time till 20.08.2004.

Heard the learned counsel for the petitioner and the learned standing counsel for the Provident Fund organization.

Learned counsel for the petitioner submits that as no proper appellate authority is duly constituted, the petitioner could not obtain appropriate interim orders in the appeal. He further submits that the petitioner establishment has to pay a sum of Rs.1,22,000/- and if some time is granted, the petitioner would pay the amount in instalments. Such request is opposed by the standing counsel for the Provident Fund Organization. The petitioner does not seriously dispute that the second respondent determined the arrears of provident fund of Rs.2,84,753/-. This dispute is to be resolved only by appellate authority before whom the appeal is pending. This issue cannot be gone into. Insofar as the request for granting some time, the petitioner had already approached the second respondent and gave an undertaking to pay the amount under protest by 20.08.2004. Though, a submission is made that the petitioner was forced to give such undertaking under duress, this Court cannot accept the same. The petitioner was facing action under Section 8B of the Act, and therefore, he was granted time till 20.08.2004. Be that as it is, as the petitioner himself has given an undertaking if any order is passed at this juncture in exercise of power under Article 226 of the Constitution of India, it would amount to issuing a mandamus contrary to the provisions of the Act, preventing the respondent from exercising the powers under Section 8B of the Act, especially in a case where the

petitioner already availed the remedy under Section 7I of the Act. The petitioner has to work out his remedies before the authorities under the statute and the writ petition cannot be a proper remedy.

The writ petition, with the above observations, is dismissed. No costs.

_____ Date:16.08.2004 (V.V.S.RAO,J.)

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To

1 Employees Provident Funds Appellate Tribunal, rep.by its Chairman, New Delhi
2 Assistant Provident Fund Commissioner, Sushiram Complex, Patancheru, Medak District.

3 2CD copies.

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